

CONTRACT #12
RFS # N/A

**Chattanooga State Technical
Community College**

VENDOR:
TransMarkets, LLC



Tennessee Board of Regents

1415 Murfreesboro Road - Suite 350 - Nashville, Tennessee 37217-2833
(615) 366-4400 FAX (615) 366-4464

June 13, 2006

RECEIVED

JUN 13 2006

FISCAL REVIEW

Mr. Jim White, Executive Director
Legislative Fiscal Review Committee
Rachel Jackson Building, 8th Floor
Nashville, TN 37243-0057

Dear Mr. White:

Attached is a proposed agreement between Chattanooga State Technical Community College and TransMarkets, LLC. This contract will provide for an innovative approach to delivering the college's academic programs to truck drivers and offers significant revenue potential. The contract would be effective August 1, 2006 in order for the college to begin offering the program in the Fall semester. Also attached is the necessary documentation to explain this request.

Representatives from the college will be in attendance at the meeting of the Committee and will be prepared to answer any questions about this program. Additionally, if you feel it would be beneficial for someone to meet with you prior to the committee meeting, please let us know and the College president will be glad to meet with you and your staff ahead of time. If you have any questions about the attached materials, please feel free to contact Angela Gregory at 366-4436.

Sincerely,

Robert H. Adams
Vice Chancellor for Business and Finance

Attachment

c: Dr. James Catanzaro
Ms. Angela Gregory

Austin Peay State University • East Tennessee State University • Middle Tennessee State University • Tennessee State University
Tennessee Tech University • University of Memphis • Chattanooga State Technical Community College
Cleveland State Community College • Columbia State Community College • Dyersburg State Community College
Jackson State Community College • Motlow State Community College • Mississippi State Technical Community College
Roane State Community College • Southwest Tennessee Community College • Volunteer State Community College
Walters State Community College • Nashville State Technical Community College • Northeast State Technical Community College
The Tennessee Technology Centers

021406

FISCAL REVIEW

REQUEST: NON-COMPETITIVE CONTRACT

APPROVED

RECEIVED

JUN 13 2006

Commissioner of Finance & Administration

Date:

FISCAL REVIEW

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A request can not be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.

1) RFS #		
2) State Agency Name :	Chattanooga State Technical Community College	
3) Service Caption :	This is a revenue agreement to provide instructional services (online education) for truckers	
4) Proposed Contractor :	TransMarkets, LLC	
5) Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt)	August 1, 2006	
6) Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	July 31, 2007	
7) Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :		
8) Approval Criteria : (select one)	<input type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input checked="" type="checkbox"/> only one uniquely qualified service provider able to provide the service	
9) Description of Service to be Acquired :	<p>Chattanooga State Technical Community College is partnering with TransMarkets, LLC to offer online education to the trucking industry. TransMarkets, LLC is a freight network, communications, and trucking infrastructure platform company that will promote Chattanooga State as the educational institution that can offer a variety of degrees and certificates for the trucker.</p>	
10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service :	<p>In February 2006, TransMarkets, LLC approached Chattanooga State with the possibility of a unique partnership bringing online education to the trucking industry. By TransMarkets, LLC's own admission, Chattanooga State is the only educational institute in this area that they want to partner with and who they feel can offer this type of online services.</p>	
11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used :	<p>This initiative is new and has never been attempted by the trucking industry or an educational institute. Therefore, Chattanooga State has never provided this type of service in the past.</p>	
12) Name & Address of the Proposed Contractor's Principal Owner(s) : (not required if proposed contractor is a state education institution)	<p>Stephen C. Fuller, 6125 Preservation Drive, Chattanooga, TN 37416</p>	
13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service :		

Chattanooga State has long been known as an innovative and entrepreneurial-spirited educational institution. For over 39 years, Chattanooga State has sought ways to educate the Chattanooga and surrounding areas and desires to continue this pattern with its partnership with TransMarkets, LLC.

14) Documentation of Office for Information Resources Endorsement :
(required only if the subject service involves information technology)

select one: ☒ Documentation Not Applicable to this Request ☐ Documentation Attached to this Request

15) Documentation of Department of Personnel Endorsement :
(required only if the subject service involves training for state employees)

select one: ☒ Documentation Not Applicable to this Request ☐ Documentation Attached to this Request

16) Documentation of State Architect Endorsement :
(required only if the subject service involves construction or real property related services)

select one: ☒ Documentation Not Applicable to this Request ☐ Documentation Attached to this Request

17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

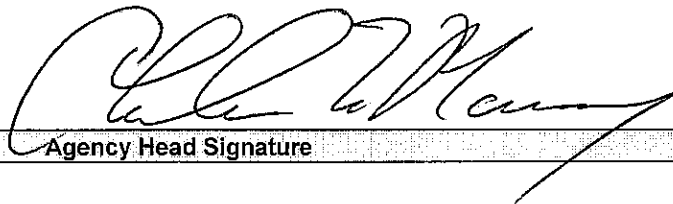
This is a revenue contract for the College. TransMarkets, LLC approached Chattanooga State requesting their services; the College would be willing to provide similar services to others if requested.

18) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process :
(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

- a. The use of Non-Competitive Negotiation is in the best interests of the state as a non-exclusive revenue generating contract for the College to provide online education for truck drivers.
- b. TransMarkets, LLC is the only uniquely qualified service provider for these contracted truck drivers; in addition, truckers will be accessing courses through TransMarkets, LLC patented In-Cab PC in a manner not previously available.

REQUESTING AGENCY HEAD SIGNATURE & DATE :

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)



Agency Head Signature

6/12/06
Date

AGREEMENT
BETWEEN
CHATTANOOGA STATE TECHNICAL COMMUNITY COLLEGE
AND
TRANSMARKETS, LLC

This Agreement is made this _____ day of _____, 20____, by and between Chattanooga State Technical Community College, hereinafter referred to as the "Institution", and TransMarkets, LLC, at 6125 Preservation Drive, Chattanooga, TN 37416 organized under the law of the State of Nevada, hereinafter referred to as "Contractor".

WITNESSETH:

WHEREAS, Contractor has agreements to provide various services to certain trucking companies which employ fleet drivers;

WHEREAS, Contractor has developed a proprietary method of communication for truckers use within their cabs;

WHEREAS, Contractor's client trucking companies have identified the need to provide additional benefits or incentives to their employees and desire to provide continuing education opportunities; and

WHEREAS, Institution is a state institution of higher education within the Tennessee Board of Regents (TBR) system which provides educational opportunities on-line;

NOW THEREFORE, in consideration of the foregoing and of the mutual promises herein contained, the parties have agreed and do hereby enter into this Agreement according to the provisions set out herein:

A. Definitions

As used herein, the following terms shall have the following meanings:

1. Student – Fleet driver from Contractor's client trucking companies who officially enrolls in Institution on a per semester basis.
2. Program – Truck driver education program provided to Student(s).
3. Dedicated Sections – The online sections of the Program within each session of each semester.

4. Contractor Technician – Contractor staff who will assist the Students with technical connectivity questions.
5. Institution Coordinator- Institution staff that will coordinate with all Contractor Technicians in answering all questions related to academic and career planning.

B. SCOPE

1. The Contractor shall:
 - a. Advertise and recruit applicants for the Program. The prior written approval of Institution is required for any use of its name, programs or other marks.
 - b. Pay Institution for each Student registered in the Program, the TBR approved maintenance, technology access, and Center for Distributed Education fees. Additionally, for Students who are first time applicants to the Institution, the Contractor will pay the application fee and applicable testing fees. Contractor shall be responsible for full payment of fees to the Institution for Students enrolled in the Dedicated Sections, even if the Student's employment status with the Contractor's client trucking companies changes during the session. Refunds, from Institution to Contractor, for change in enrollment status of the Student(s) will be applicable only as specified by TBR and Institution refund policies and guidelines.
 - c. Inform all applicants that they must be tested for admission by a certified testing agency, the American Council of Testing. Inform applicants that they must meet all Institution admission criteria.
 - d. Electronically transfer funds for Institution invoices via Automated Clearing House (ACH) Credit within thirty (30) days of receipt of invoice. Payments not received by the Institution within thirty days of receipt of invoice will be delinquent and subject to collection in accordance with TBR and Institution policies and guidelines, including referral to a collection agency. Contractor agrees to pay all collection costs incurred by the Institution. Students will not be eligible for enrollment in future terms until fees are paid.
 - e. Provide a Director of In-Cab Media and Commerce who will ensure collaborative and proactive communication with Institution Director of In-Cab/Online Education.

- f. Provide space for a call center and staff it with Contractor Technicians.
- g. Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the Institution for the Contractor's temporary use under this Agreement. Institution shall maintain an inventory of such items, which shall be checked annually. Upon termination of this Agreement, all property furnished shall be returned to the Institution in as good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the Institution for the residual value of the property at the time of loss.

2. The Institution shall:

- a. Provide online credit courses beginning August 14, 2006, allowing Students to have a 14-week maximum deadline for completion of each course.
- b. Invoice Contractor on a timely basis for fees; at a minimum, once per term.
- c. Provide online degree programs and certificates which exist or are later developed pursuant to Institution's strategic plan.
- d. Provide an Institution Director of In-Cab/Online Education who will ensure collaborative and proactive communication with Contractor's Director of In-Cab Media and Commerce.
- e. Provide standard student support services.
- f. Provide standard admissions and enrollment services.
- g. Provide standard online course management services.
- h. Provide qualified online adjunct instructors.
- i. Equip 6 stations (desks, chairs, telephones, and computers.) for Contractor's call center, maximum cost not to exceed \$21,000. No payment shall be made by Institution to Contractor under this Agreement.

- j. Provide Institution Coordinator to represent Institution at Contractor's call center during normal, Institution business hours. The purpose of this position is to foster compliance with TBR and Institution policies and guidelines. As the number of Students in the Program grows, the number of Institution Coordinators provided by Institution shall be increased as mutually agreed by the parties.
- k. Monitor course sections to ensure appropriate enrollment levels consistent with Institution practices.

C. The parties further agree that the following shall be essential terms and conditions of this Agreement.

- 1. The Contractor warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of the state of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, sub-Contractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Agreement.
- 2. The parties agree to comply with Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Executive Order 11,246, the Americans with Disabilities Act of 1990 and the related regulations to each. Each party assures that it will not discriminate against any individual including, but not limited to, employees or applicants for employment and/or students because of race, religion, creed, color, sex, age, disability, veteran status or national origin.

The parties also agree to take affirmative action to ensure that applicants for employment with the Contractor and that Contractor's employees are treated during their employment without regard to their race, religion, creed, color, sex, age, disability, veteran status, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection available to employees and applicants for employment.

- 3. The Contractor must provide and maintain a commercial general liability insurance policy, naming the Institution as a named insured. The policy shall provide coverage which includes, but is not limited to, bodily injury, personal injury, death, property damage and medical claims, with minimum limits of \$1,000,000 per occurrence, \$2,000,000 in the aggregate and \$5,000,000 as an umbrella. The Contractor shall

maintain workers' compensation coverage or a self-insured program as required under Tennessee law, with Employer's Liability Limits of \$100,000. The Contractor shall deliver to the Institution a certificate of insurance no later than the effective date of this Agreement. If any policy providing insurance required by this Agreement is cancelled prior to the policy expiration date, the Contractor, upon receiving a notice of cancellation, shall give immediate notice to the Institution. The Contractor agrees to pay all taxes incident hereunto, and otherwise protect and hold the Institution harmless from any and all liability not specifically provided for in this Agreement.

4. This Agreement shall be effective for the period commencing August 1, 2006 and ending July 31, 2007. By mutual agreement, this Agreement may be renewed for additional twelve (12) month periods under the same terms and conditions or duly authorized amendments thereto, not exceeding a total contract period of sixty (60) months.
5. In the event Contractor fails to provide 350 Students by December 31, 2006, Institution may terminate this Agreement upon 90 days written notice to Contractor. Termination shall not affect currently enrolled students. Institution shall be entitled to receive actual, reasonable, documented damages for any satisfactory authorized work completed as of the termination date to include such costs as consultative time, preparation of materials, and other instruction-related costs.
6. In the event Institution fails to receive legislative funding for the second or later year of the term of this Agreement, Institution may terminate this Agreement upon 90 days written notice to Contractor. Termination shall not affect currently enrolled students.
7. This Agreement may be terminated without cause by either party by giving written notice to the other, at least 90 days before the effective date of termination. Termination shall not affect currently enrolled students. In that event, the Institution shall be entitled to receive actual, reasonable, documented damages for any satisfactory authorized work completed as of the termination date to include such costs as consultative time, preparation of materials, and other instruction-related costs.
8. If the Contractor fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor shall violate any of the terms of this Agreement, the Institution shall have the right to immediately terminate this Agreement.
Notwithstanding the above, the Contractor shall not be relieved of liability to the Institution for damages sustained by virtue of any breach of this Agreement by the Contractor.

9. The Contractor shall maintain documentation for all charges against the Institution under this Agreement. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Agreement, shall be maintained for a period of three full years from the date of the final payment, and shall be subject to audit, at any reasonable time and upon notice, by the Institution or the Comptroller of the Treasury, or their duly appointed representatives.
10. The Contractor shall not assign this Agreement or enter into sub-contracts for any of the work described herein without obtaining the prior written approval of the Institution or Tennessee Board of Regents, as appropriate. Approval shall not be given if the proposed subcontractor was or is currently ineligible to bid on the contract.
11. This Agreement may be modified only by written amendment executed by all parties hereto.
12. This Agreement shall be governed by, and construed under the laws of the State of Tennessee without regard to the conflict of laws principles thereof. As a state agency, Institution is self-insured and does not carry or maintain commercial general liability insurance. Any and all claims against the State of Tennessee, including the Institution or its employees, shall be heard and determined by the Tennessee Claims Commission in the manner prescribed by law. Damages recoverable against the Institution shall be expressly limited to claims paid by the Claims Commission pursuant to TCA § 9-8-301 et seq.
13. Institution will comply with the Tennessee Open Records Act in performing its duties under this Agreement.
14. This Agreement shall not be binding upon the parties until it is approved by the President, the Tennessee Board of Regents, and other state officials, as appropriate.

In witness whereof, the parties have by their duly authorized representatives set their signatures.

TRANSMARKETS, LLC

CHATTANOOGA STATE
TECHNICAL COMMUNITY COLLEGE

BY: _____ BY: _____
Stephen C. Fuller James L. Catanzaro

TITLE: Chief Executive Officer TITLE: President

DATE: _____ DATE: _____

APPROVED: TENNESSEE BOARD OF REGENTS

BY: _____

TITLE: _____

DATE: _____